No. 80-1203

In the Supreme Court of the United States

OCTOBER TERM, 1980

THE STATE OF NEW JERSEY, PETITIONER

v.

READING COMPANY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends that the bankruptcy court in a reorganization proceeding had no authority to approve a reorganization plan that failed to provide for full immediate payment in cash of petitioner's deferred tax claims, and that partial payment of those claims in cash with the balance paid in the form of securities infringes petitioner's rights under the Tenth Amendment.

1. Petitioner challenges an order of the district court (Pet. App. 1a-38a) approving a plan of reorganization for respondent Reading Company under Section 77 of the former Bankruptcy Act, 11 U.S.C. 205. In the reorganization proceeding that led to the adoption of the plan, petitioner asserted claims for approximately $250,000 in state real estate and corporate franchise taxes. The plan provides

that petitioner will receive 30% of its tax claims in cash and 70% in securities (Pet. App. 25a).[1]

The reorganization plan also compromised the claims of approximately 12,000 other creditors and stockholders of Reading. Among those creditors was the United States, the holder of claims of three different classes that aggregated approximately $53.4 million.[2] All creditors and stockholders, with the exception of petitioner, agreed to the plan.

After a careful examination of the plan, the district court concluded that it conformed with applicable requirements of the Bankruptcy Act, was feasible, and was fair and equitable to all classes of creditors and stockholders. The court observed that no settlement would be possible without the creditors' agreeing to defer a major portion of their debt (Pet. App. 14a) and added that the "main compromise which makes all other agreements possible is the waiver by the United States of its first priority claim to which it is legally entitled under * * * 45 U.S.C. 721(h)" (Pet. App. 17a). The district court carefully reviewed petitioner's contentions that it was entitled to immediate full payment in

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[1]To the extent that they are not satisfied by immediate cash payments, petitioner's tax claims are to be paid with Series B and C Administrative Notes—both of which are secured obligations paying annual compound interest of 8% (Pet. App. 9a-10a).

[2]The first group of claims of the United States are administrative claims resulting from payment by the Consolidated Rail Corporation of certain post-bankruptcy expenses of the debtor. Those claims will be satisfied by the issuance of Series A Administrative Notes issued by the reorganized company. The United States also is the holder of certain pre-bankruptcy secured claims resulting from the guarantee of a collateral trust loan. A portion of that claim will be satisfied with Series A Administrative Notes, with the remainder to be paid in the same manner as claims of other secured creditors of the debtor. Finally, the United States holds certain pre-bankruptcy unsecured claims resulting from loans made by the Secretary of Transportation to the debtor. Under the Plan, those claims will receive the same treatment as other pre-bankruptcy unsecured claims.

cash, that the reorganization plan was not fair and equitable to senior creditors, and that the reorganization plan infringed petitioner's rights under the Tenth Amendment (Pet. App. 24a-33a). Petitioner was the only creditor to seek review of the reorganization plan. The court of appeals affirmed the district court's order without opinion (Pet. App. 40a-41a).

2. Petitioner's claim that it is entitled to full immediate payment of its tax claims in cash was correctly rejected in the district court's opinion (Pet. App. 24a-33a), on which we rely. The district court's ruling is fully supported by *Consolidated Rock Products Co.* v. *Du Bois*, 312 U.S. 510, 528-530 (1941), and *In re Penn Central Transportation Co.*, 458 F. Supp. 1234, 1282 (E.D. Pa. 1978), aff'd, 596 F. 2d 1102, 1111 (3d Cir.), cert. denied, 444 U.S. 834 (1979).[3]

Petitioner's contention that the reorganization plan violates the Tenth Amendment is also without merit. The modification in the form of payment of petitioner's claims "displaced no state choices as to how governmental operations should be structured, nor did it force the States to remake such choices * * *." *National League of Cities* v. *Usery*, 426 U.S. 833, 853 (1976). As the district court explained (Pet. App. 32a-33a): "The Plan would allow the trustees to pay 30 percent in cash and 70 percent in securities instead of the full amount in cash as New Jersey favors. The deferral of approximately $175,000 of immediate cash payment is hardly disruptive of the day to day functions of an entire state."

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[3]These authorities are discussed in respondent Reading Company's Brief in Opposition at 5-7.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

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